

Message Text

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ACTION SNM-05

INFO OCT-01 EA-12 ISO-00 L-03 HA-05 H-02 DEAE-00
CIAE-00 INR-10 IO-14 JUSE-00 NSAE-00 CTME-00
TRSE-00 ICA-20 NSC-05 OES-09 OMB-01 SCS-06 CA-01
PPTE-00 MED-05 HEW-06 AID-05 SP-02 AGRE-00 DODE-00
/112 W

-----036799 241415Z/46

P 240921Z JUL 78
FM AMEMBASSY TAIPEI
TO SECSTATE WASHDC PRIORITY 8252
INFO AMEMBASSY BANGKOK
AMEMBASSY MANILA
AMCONSUL HONG KONG
AMEMBASSY TOKYO
AMEMBASSY SINGAPORE
USLO PEKING

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E.O.11652: N/A
TAGS : SNAR, TW, US
SUBJECT : ROC NARCOTICS LAWS

REF : STATE 170187

FOLLOWING IS COMPILATION OF ROC NARCOTICS LAWS IN
RESPONSE TO REFTEL:

NOTE: IN ORDER TO AVOID POSSIBLE CONFUSION IN THE
AREA OF APPLICABLE DRUG LAWS IN THE ROC, DEPARTMENT
SHOULD BE AWARE THAT THE CHINESE CRIMINAL CODE,
OPIUM OFFENSE CHAPTER, WHICH SPECIFIES LESSER
PENALTIES, IS CURRENTLY INAPPLICABLE IN THE ROC.
ALL DRUG OFFENSES ARE GOVERNED BY THE ANTI-OPIUM
AND NARCOTICS LAW PROMULGATED BY PRESIDENTIAL FIAT
ON JUNE 3, 1955, AMENDED JUNE 21, 1973, A TRANSLATED
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COPY OF WHICH IS BEING FORWARDED BY POUCH. THE
CHINESE CRIMINAL CODE AS IT APPLIES TO DRUG OFFENSES
IS NOT APPLICABLE AS LONG AS THE ROC IS UNDER MARTIAL
LAW. DANGEROUS DRUGS (BARBITUATES, ETC.) ARE
CONTROLLED BY "LAWS OF CONTROL OF DRUGS AND DRUG
FIRMS" AND "LAW FOR THE PUNISHMENT OF POLICE
OFFENSES," BOTH TRANSLATED APPLICABLE SECTIONS

ALSO POUCHED.

1. POSSESSION:

- A. THERE IS A DIFFERENTIATION MADE IN THE LAW DEPENDING ON THE NARCOTIC SUBSTANCE POSSESSED AND OTHER CONTROLLED SUBSTANCES
 - 1) OPIUM OR NARCOTICS - 2 TO 5 YEARS IMPRISONMENT
 - 2) MARIJUANA AND OPIUM POPPIES - 6 MOS. TO 2 YEARS
 - 3) DANGEROUS DRUGS (RESTRICTED) - 1 TO 7 YEARS
 - 4) INSTRUMENTS USED FOR MANUFACTURING OR USING NARCOTICS - NOT MORE THAN 3 YEARS

(NOTE: POSSESSION FOR SALE - IN PRACTICE THERE IS A JUDICIAL DETERMINATION BASED ON AMOUNT)

- 1) OPIUM OR NARCOTICS - 10 YEARS TO LIFE
- 2) MARIJUANA - AT LEAST 7 YEARS
- 3) ANY ADDICTIVE SUBSTANCE OR OPIUM POPPIES - AT LEAST 5 YEARS
- 4) INSTRUMENTS USED FOR MANUFACTURING OR USING NARCOTICS - NOT MORE THAN 5 YEARS

- B. THERE IS NO QUALIFYING AMOUNT TO BE IN POSSESSION FOR OPERATION OF THE OFFENSE

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- C. PENALTIES FOR POSSESSION ARE LESS SEVERE THAN OTHER NARCOTIC OFFENSES AND THERE IS NO DISCRETION ALLOWED FOR LAW ENFORCEMENT, THOUGH THERE CAN BE JUDICIAL DISCRETION IF THE OFFENDER'S SENTENCE CAN BE MITIGATED BY ANOTHER SECTION OF THE DRUG LAWS:
 - TO-WIT, INFORMING ON HIS SOURCE OF SUPPLY

2. TRAFFICKING:

- A. THE LAW SEPARATES TRAFFICKING OFFENSES DEPENDING ON THE PARTICULAR SUBSTANCE
 - 1) OPIUM OR NARCOTICS - DEATH
 - 2) MARIJUANA - DEATH OR LIFE IMPRISONMENT
 - 3) ADDICTING SUBSTANCES AND OPIUM POPPY SEEDS - 7 YEARS TO LIFE
 - 4) DANGEROUS DRUGS (RESTRICTED) - 1 TO 7 YEARS
 - 5) INSTRUMENTS USED FOR MANUFACTURING OR USING NARCOTICS - 1 TO 7 YEARS

- B. THERE ARE MAXIMUM AND MINIMUM PENALTIES AS DESCRIBED ABOVE IN (A) AND THERE ARE SPECIAL

- PROVISIONAL LIBERTY PROVISIONS. A DEFENDANT-TRAFFICKER MAY ONLY BE ALLOWED PROVISIONAL FREEDOM IF HE IS ACQUITTED BY THE COURT BUT THE SENTENCE IS APPEALED BY THE PROSECUTOR. A CONVICTED DEFENDANT HAS NO SUCH LIBERTY.
- C. THE ELEMENTS OF THE OFFENSE ARE DECIDED BY THE JUDGE HEARING THE CASE AND HIS DECISION WILL BE BASED ON THE AMOUNT OF DRUGS THE INDIVIDUAL IS BEING PROSECUTED FOR. A DIFFERENTIATION IS MADE ON POSSESSION FOR USE AS OPPOSED TO POSSESSION FOR SALE BASED ON THAT CRITERIA.

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- D. THERE IS NO SPECIFIC CRIMINAL OFFENSE RELATING TO CONSPIRACY TO TRAFFIC, IMPORT OR EXPORT DRUGS; HOWEVER, CHINESE LAW STATES THAT ANYONE VIOLATING THE NARCOTIC LAWS SHALL BE PUNISHED, EVEN IF THE OFFENSE HAS NOT BEEN COMPLETELY ACCOMPLISHED.

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3. CULTIVATION, PRODUCTION, ELABORATION:

- A. CULTIVATION OF THE FOLLOWING IS NOT PROHIBITED
 - BY LAW:
 - 1) MARIJUANA (CANNABIS)
 - 2) COCO LEAVES
 - CULTIVATION OF OPIUM POPPIES IS PROHIBITED BY
 - LAW, CONVICTION OF WHICH RESULTS IN THE
 - DEATH PENALTY
- B. ALTHOUGH THERE IS NO LAW SPECIFICALLY
 - PROHIBITING CULTIVATION OF MARIJUANA OR
 - COCO LEAVES, BECAUSE POSSESSION IS ILLEGAL,
 - IN EFFECT ITS CULTIVATION IS PROHIBITED AND
 - WOULD BE HANDLED UNDER POSSESSION OR
 - TRAFFICKING STATUTES

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- C. THE PENALTIES FOR ELABORATING NARCOTICS
 - SUBSTANCES FROM CANNABIS, COCO OR OPIUM POPPIES
 - COULD BE THE SAME AS FOR THE ORIGINAL MATERIAL
 - (SEE 2A)

4. FINANCIAL:

- A. THERE IS NO SPECIFIC OFFENSE RELATING TO
 - FINANCIAL SUPPORT FOR CULTIVATING, ELABORATION
 - OR TRAFFICKING; HOWEVER, IF IT CAN BE PROVED,
 - OFFENDER WILL BE TRIED UNDER 2A ABOVE.
- B. THERE ARE CURRENCY CONTROL LAWS ON EXPORT OF
 - CURRENCY, PRESENTLY DOLLARS 3,000 OR IF
 - DESTINED FOR THE U.S., 1,500 DOLLARS OR HONG
 - KONG 1,200 DOLLARS.

5. CRIMINAL PROCEDURE:

- A. THERE IS A PERIOD OF INVESTIGATIVE DETENTION IN
 - THE LAW, WHICH ALLOWS THE POLICE TO DETAIN A
 - SUSPECT, AFTER ARREST, FOR A MAXIMUM OF 24
 - HOURS, AT WHICH TIME A CHARGE MUST BE FILED
 - WITH THE PROSECUTOR'S OFFICE. CONSULAR ACCESS
 - IS PERMITTED DURING THIS TIME AND IN PRACTICE
 - THE EMBASSY IS USUALLY THE FIRST TO BE
 - NOTIFIED.

- B. FOLLOWING PRESENTATION OF CASE TO THE PROSE-CUTOR, AND IF AN INDICTMENT IS HANDED DOWN BY THE PROSECUTOR, THE CUSTOMARY PRE-TRIAL DETENTION IS USUALLY LESS THAN 90 DAYS.
 - 1) TRIAL AVERAGES 10 DAYS
 - 2) REVIEW/CONFIRMATION 10 DAYS

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- 3) APPEAL 30 DAYS
- D. A PUBLIC DEFENDER IS AVAILABLE AT NO COST TO THE DEFENDANT IF REQUESTED
- E. THERE IS ONLY ONE PROVISION FOR PAROLE DISCUSSED IN 2B ABOVE
- F. IT IS CUSTOMARY TO EXPEL MINOR OFFENDERS, USUALLY AFTER TRIAL AND CONVICTION. IF THE OFFENSE WARRANTS A SENTENCE OF LESS THAN 2 YEARS, THE DEFENDANT'S SENTENCE IS OFTEN SUSPENDED AND HE IS EXPelled. UNGER

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